

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TENNESSEE

DANIEL LOVELACE and
HELEN LOVELACE, Individually
and as Parents of BRETT
LOVELACE, Deceased,

Plaintiff,

v.

Case Number 2:13-cv-02289

PEDIATRIC ANESTHESIOLOGISTS,
P.A., BABU RAO PAIDIPALLI, and
MARK P. CLEMONS,

Defendant.

VIDEOTAPE DEPOSITION

OF

KELLY KISH

May 15, 2014

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R I V E R S I D E R E P O R T I N G

1 to care for a twelve year old male who was in the
2 PACU following a tonsillectomy/adenoidectomy and
3 that this was the only patient assigned to you
4 during the approximate 90 minutes the patient was
5 in the PACU. We have already talked about that,
6 that's true, correct?

7 A. That's correct.

8 Q. Number 4 says that the patient was
9 stable upon transfer from the operating room to
10 the PACU, is that correct?

11 A. That's correct.

12 Q. Number 5 we have already discussed. The
13 patient's mother and father were present in the
14 PACU with the patient, that's correct?

15 A. Correct.

16 Q. Number 6, Upon arrival to the PACU, the
17 patient positioned himself prone, that's on his
18 stomach, correct?

19 A. Correct.

20 Q. With his legs drawn up under him, his
21 buttocks in the air, his arms crossed over his
22 head and his face down on the mattress. At no
23 time did you attempt to change his position. Is
24 that correct?

1 A. I don't remember about his arms being
2 over his head and his face was not down. It was
3 to the side.

4 Q. Okay. Was it to the side the entire
5 time that he was in there?

6 A. It was. It was.

7 Q. So you could actually see part of his
8 face?

9 A. Yes, uh-huh.

10 Q. Number 7 states, Upon the patient's
11 arrival in to the PACU, respondent made an
12 initial assessment but chose not to place the
13 patient on a cardiac monitor as permitted by
14 hospital policy, is that correct?

15 A. He was -- okay. It's saying here that I
16 didn't have him on the cardiac monitor. Then
17 obviously I didn't.

18 The hospital policy for a T&A, I don't
19 recall that that's hospital policy for that,
20 because if it had been hospital policy I would
21 have done it.

22 Q. Okay.

23 A. You know, anyone who has brain surgery,
24 you know, certain criteria require the patient to

1 the time that Dr. Clemons got there, was Brett on
2 his face, I mean, literally on his stomach?

3 MS. MAGEE: Object to the form.

4 MR. TALLEY: Go ahead and answer.

5 A. He was prone.

6 Q. Okay. And was his rear end up in the
7 air?

8 A. Uh-huh.

9 MR. TALLEY: Is that a yes?

10 A. Yes, yes, yes.

11 Q. And did he have his hands above his head
12 like this on the gurney?

13 A. I don't remember how he had his hands.

14 Q. Okay. Let me show you a medical
15 illustration and ask if this appears to be the
16 position of Brett Lovelace during the time that
17 he was in the PACU and when Dr. Clemons was
18 there?

19 MS. MAGEE: Which one, with the
20 face down or the face to the side?
21 Which one are you talking about because
22 there's two pictures?

23 Q. (By Mr. Ledbetter) Look at the pictures
24 and tell me without commentary from counsel.

1 MS. MAGEE: No, I want to know
2 which one you're talking about.

3 A. His head was to the side. His head was
4 to the side. It was not flat down like that. It
5 was to the side. It was facing towards me.

6 Q. And that would have been when, when he
7 arrived?

8 A. After the combativeness and he calmed
9 down, yes, that would be that.

10 Q. Did you ever look at his face?

11 A. I did look at his face.

12 Q. Okay. Did he do any moving from the
13 time that he arrived there until the time that
14 the code was called?

15 A. He did not.

16 Q. Okay. Were his legs in the position
17 bunched up under him that we are depicting?

18 A. I don't recall them being that far up
19 underneath him. His butt was in the air and he
20 had his underwear on and the gown was open, but I
21 don't remember his legs being up that far
22 underneath him.

23 Q. Okay.

24 A. Not quite that far. I think they were

1 bedside and speak to the parents and observe the
2 patient.

3 Now, whether he came and saw them on his
4 way out, I don't have any idea.

5 Q. You have no reason to dispute that if
6 that's his testimony, correct?

7 A. Correct.

8 Q. Okay. Now, you testified earlier today
9 that you were the individual in charge of
10 monitoring Brett Lovelace while he was in the
11 PACU, is that correct?

12 A. That's correct.

13 Q. In your nursing judgment if you believed
14 that the patient needed to be turned from the
15 prone position to the supine position you
16 could have done that, correct?

17 A. Correct.

18 Q. And at no point did you do that,
19 correct?

20 A. Correct.

21 Q. At no point did you feel like you needed
22 to contact anybody and ask for assistance, is
23 that correct?

24 A. Correct.

1 Q. If you had needed to contact somebody
2 and request assistance with regard to, let's say,
3 Brett's oxygenation status, you could have done
4 that, is that correct?

5 A. Correct.

6 Q. And you didn't do that, correct?

7 A. Correct.

8 Q. Dr. Paidipalli, as you testified when
9 Mr. Ledbetter was asking you questions, he was at
10 the hospital and he was available if you had
11 contacted him, correct?

12 MR. LEDBETTER: Object. It's a
13 compound question. It has more moving
14 parts than --

15 A. Correct.

16 Q. Thank you. And you did not contact Dr.
17 Paidipalli, correct?

18 A. Correct.

19 Q. You never contacted Dr. Clemons either
20 after he left the bedside in the five minutes
21 that he was there, correct?

22 A. Correct.

23 Q. Now, Mr. Ledbetter asked you some
24 questions about a chart that he showed you, and

1 there were three different views, and I'll submit
2 to you that this is a chart that he provided to
3 us and we don't know exactly where it came from,
4 but there's three different views on this chart,
5 Exhibit 5. Two are face down, and then one is
6 with the face to the side. Do you see that?

7 A. Yes.

8 Q. I think you've testified here today both
9 during my questions and Mr. Ledbetter's that you
10 do not recall Brett Lovelace's face being face
11 down at any point in time, is that correct?

12 A. That's correct.

13 Q. His face was to the side?

14 A. To the side.

15 Q. Such as the picture down here at the
16 bottom, correct?

17 A. It was more to the side than what that
18 is. It was more like that (Indicating).

19 Q. So even more to the side than this
20 picture?

21 A. Yes.

22 Q. I'm pointing -- I'm going to mark that
23 with a pink dot right there?

24 A. Yes.

1 Q. Okay. And to the best of your
2 recollection, his face was always to the side
3 while he was in the PACU, is that correct?

4 A. To the best of my memory, yes.

5 Q. Were you aware that somebody was taking
6 photographs of Brett Lovelace in the PACU?

7 A. No.

8 Q. At any point in time do you recall
9 blankets being over Brett's head and him being
10 completely obscured by the blanket?

11 A. No, sir -- no, ma'am.

12 Q. Up until the blood pressure dropped --
13 we talked about this earlier -- to the 84 over --
14 let me get the exact figure --

15 A. 53, I believe.

16 Q. Was it 53 -- 84 over 42, up until that
17 point, which would have been about an hour after
18 the patient was admitted to PACU, at any point in
19 time do you believe in hindsight that you should
20 have contacted somebody and requested assistance
21 with regard to Brett Lovelace?

22 MR. LEDBETTER: Object as to
23 speculation. That's what hindsight is,
24 and you're asking her to speculate what

1 positioning when you saw him?

2 A. It's close. Like I said, the head was
3 more turned to the side, and I did not recall his
4 legs being quite under him like that.

5 Q. So --

6 A. But then that picture --

7 Q. That's fine. Do you think that this
8 picture justifies this diagram then?

9 A. It does to me.

10 Q. Exhibit 8 does?

11 A. Uh-huh.

12 Q. But his face was different in all three
13 pictures?

14 A. His face was to the side.

15 Q. So if Mr. Ledbetter was to show this to
16 a jury, it would not be a fair and accurate
17 representation of what you saw, would it?

18 MR. LEDBETTER: Object. The
19 witness has been asked that question,
20 and she answered that it was in many
21 respects accurate.

22 Q. (By Mr. Gilmer) You can answer my
23 question, ma'am.

24 A. It is -- it's close except the face was